

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

TRAVIS R. MCPEEK,

Plaintiff,

vs.

CO MEYERS, CORRECTIONAL OFFICER
AT MIKE DURFEE STATE PRISON, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY;
CO LUCERO, CORRECTIONAL OFFICER
AT MIKE DURFEE STATE PRISON, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY;
UM KLIMEK, EAST CRAWFORD UNIT
MANAGER AT MIKE DURFEE STATE
PRISON, IN HIS INDIVIDUAL AND
OFFICIAL CAPACITY; LT. DYKSTRA,
OFFICER AT MIKE DURFEE STATE
PRISON, IN HIS INDIVIDUAL AND
OFFICIAL CAPACITY; UNKNOWN MAIL
ROOM OFFICER(S), CORRECTIONAL
OFFICER(S) AT MIKE DURFEE STATE
PRISON, IN HIS/HER INDIVIDUAL AND
OFFICIAL CAPACITY; WARDEN BRENT
FLUKE, WARDEN AT MIKE DURFEE
STATE PRISON, IN HIS INDIVIDUAL AND
OFFICIAL CAPACITY; UC KELLY
TJEERDSMA, EAST CRAWFORD UNIT
COORDINATOR/OFFICER AT MIKE
DURFEE STATE PRISON, IN HER
INDIVIDUAL AND OFFICIAL CAPACITY;
CO LIVINGSTON, CORRECTIONAL
OFFICER AT MIKE DURFEE STATE
PRISON, IN HER INDIVIDUAL AND
OFFICIAL CAPACITY; DEPUTY WARDEN
SCHIEFFER, DEPUTY WARDEN AT MIKE
DURFEE STATE PRISON, IN HER
INDIVIDUAL AND OFFICIAL CAPACITY;
WARDEN ROBERT DOOLEY, WARDEN AT
MIKE DURFEE STATE PRISON IN HIS

4:20-CV-04078-RAL

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND REQUIRING
PLAINTIFF TO PAY AN INITIAL
PARTIAL FILING FEE

INDIVIDUAL AND OFFICIAL CAPACITY;
 UNKNOWN PROPERTY OFFICER,
 CORRECTIONAL OFFICER AT MIKE
 DURFEE STATE PRISON, IN HIS/HER
 INDIVIDUAL AND OFFICIAL CAPACITY;
 SD BOARD OF PARDONS AND PAROLEES,
 CORRECTIONAL OFFICER(S)/SOUTH
 DAKOTA BOARD MEMBER(S) AT SOUTH
 DAKOTA DEPARTMENT OF
 CORRECTIONS, IN THEIR INDIVIDUAL
 AND OFFICIAL CAPACITY; WARDEN
 DARIN YOUNG, WARDEN AT THE
 "HILL" AND/OR
 SIOUX FALLS PRISON, IN HIS
 INDIVIDUAL AND OFFICIAL CAPACITY;
 LISA ROTHSCADL, COUNTY ATTORNEY
 AT BON HOMME COUNTY, SD, IN HER
 INDIVIDUAL AND OFFICIAL CAPACITY;
 MARK PAYER, JAIL
 ADMINISTRATOR/OFFICER AT YANKTON
 COUNTY JAIL, IN HIS INDIVIDUAL AND
 OFFICIAL CAPACITY; GLEN ENG, JUDGE
 AT BON HOMME COUNTY COURTHOUSE,
 IN HIS INDIVIDUAL AND OFFICIAL
 CAPACITY; AND KELLY YOUNG, POLICE
 OFFICER AT TYNDALL POLICE
 DEPARTMENT, IN HIS INDIVIDUAL AND
 OFFICIAL CAPACITY;

Defendants.

Plaintiff Travis R. McPeck filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Doc.

1. McPeck filed an application to proceed without prepayment of filing fees and has provided the Court with his prisoner trust account. Docs. 2, 3.

I. Motion to Proceed In Forma Pauperis

Under the Prison Litigation Reform Act (PLRA), a prisoner who “brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee.”

28 U.S.C. § 1915(b)(1). “ ‘When an inmate seeks pauper status, the only issue is whether the

inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan.’ ” Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (quoting McGore v. Wigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)).

The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner’s account; or
- (B) the average monthly balance in the prisoner’s account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

McPeck has reported an average monthly balance for the past six months to his prisoner trust account of \$25.41, and average monthly deposits of \$160.75. Doc. 3. Based on this information, the court grants McPeck leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$32.15 (20 percent of his average monthly deposits). McPeck must pay the initial partial filing fee of **\$32.15 by June 29, 2020**. Failure to pay the filing fee by June 29, 2020, will result in dismissal without prejudice of McPeck’s complaint.

In order to pay his filing fee, McPeck must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account. The agency having custody of the prisoner shall forward payments from the prisoner’s account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). The installments will be collected pursuant to this procedure. The Clerk of Court will send a copy of this order to the appropriate financial official at McPeck’s institution.

McPeek remains responsible for the entire filing fee, as long as he is a prisoner. See In re Tyler, 110 F.3d 528, 529-30 (8th Cir. 1997).

II. Order

Therefore, it is hereby

ORDERED that McPeek's motion to proceed in forma pauperis, Doc. 2, is granted. McPeek will make a payment of **\$32.15 by June 29, 2020**, made payable to the Clerk, U.S. District Court. If McPeek does not pay the initial partial filing fee by June 29, 2020, his complaint will be dismissed without prejudice. The Court will conduct a 28 U.S.C. § 1915A screening after McPeek pays his initial partial filing fee. It is finally

ORDERED that the institution having custody of McPeek is directed that whenever the amount in McPeek's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to the McPeek's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED May 29th, 2020.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE